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**Three Rivers Youth and African American Workers Union. Case 6-CA-30347**

April 16, 1999

**DECISION AND ORDER**

BY MEMBERS FOX, HURTGEN, AND BRAME

Pursuant to a charge filed on February 10, 1999, the General Counsel of the National Labor Relations Board issued a complaint on February 24, 1999, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 6-RC-11542. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer, with an affirmative defense, admitting in part and denying in part the allegations in the complaint.

On March 19, 1999, the General Counsel filed a Motion for Summary Judgment. On March 23, 1999, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response and the Union filed a brief in support of the General Counsel's motion.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Summary Judgment**

In its answer the Respondent admits its refusal to bargain, but attacks the validity of the certification on the basis of its objections to the election in the representation proceeding.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

At all material times, the Respondent, a private non-profit social services agency with its headquarters and

administrative offices located at 2039 Termon Avenue, Pittsburgh, Pennsylvania, and service sites located in Allegheny County and Washington County, Pennsylvania, has been engaged in the business of servicing abused, neglected, runaway and homeless youth and their families through a comprehensive and integrated spectrum of education, vocational, residential, mental health, and in-home services.

During the 12-month period ending January 31, 1999, the Respondent, in conducting its business operations described above, derived gross revenues in excess of \$250,000 from the operation of its business. During the same period of time the Respondent purchased and received directly from points located outside the Commonwealth of Pennsylvania, for use at its Allegheny County and Washington County, Pennsylvania service sites goods and materials valued in excess of \$50,000.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

*A. The Certification*

Following the election held June 30, 1998, the Union was certified on December 4, 1998, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time counselors, including residential counselors, general counselors, family preservation counselors, and vocational counselors, and educational outreach specialists, employed by the Employer at its Allegheny County and Washington County, Pennsylvania, service sites; excluding all office clerical employees and guards, professional employees and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

*B. Refusal to Bargain*

About January 13, 1999, the Union, by letter, requested the Respondent to recognize and bargain with it as the exclusive collective-bargaining representative of the unit and, since about January 27, 1999, the Respondent has failed and refused. We find that this failure and refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

**CONCLUSION OF LAW**

By failing and refusing on and after January 27, 1999, to recognize and bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning

of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

#### ORDER

The National Labor Relations Board orders that the Respondent, Three Rivers Youth, Pittsburgh, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with African American Workers Union, as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time counselors, including residential counselors, general counselors, family preservation counselors, and vocational counselors, and educational outreach specialists, employed by the Employer at its Allegheny County and Washington County, Pennsylvania, service sites; excluding all office clerical employees and guards, professional employees and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facility in Pittsburgh, Pennsylvania, and service sites located in Allegheny County and Washington County, Pennsylvania, copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the

Regional Director for Region 6, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since February 27, 1999.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. April 16, 1999

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Sarah M. Fox,	Member
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Peter J. Hurtgen,	Member
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J. Robert Brame III,	Member
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(SEAL) NATIONAL LABOR RELATIONS BOARD

#### APPENDIX

##### NOTICE TO EMPLOYEES

##### POSTED BY ORDER OF THE

##### NATIONAL LABOR RELATIONS BOARD

##### An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with African American Workers Union, as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time and regular part-time counselors, including residential counselors, general counselors, family

<sup>1</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

preservation counselors, and vocational counselors, and educational outreach specialists, employed by us at our Allegheny County and Washington County, Pennsylvania, service sites; excluding all office clerical em-

ployees and guards, professional employees and supervisors as defined in the Act.

THREE RIVERS YOUTH